THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.30491 of 1998

Dated: 31st January, 2006

Between:

M.A.Waheed.

…..PETITIONER

AND

The Vice Chairman and Managing Director,

A.P.S.R.T.C., Musheerabad, Hyderabad

& 3 others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P.No.30491 of 1998

ORDER:

Petitioner who is a Depot Clerk working in the A.P.S.R.T.C filed the present writ petition seeking direction to the respondents to pay to him the gratuity and also

leave encashment amount.

Petitioner was initially appointed as Conductor on 26-10-1961, and subsequently was promoted as Traffic Inspector. During his service, penalty was imposed removing him from service, on the ground of financial irregularity. Mercy petition filed by the petitioner before the 1st respondent, against the orders of removal, was rejected without going into the merits of the petition. A review petition filed before the Regional Manager on 1-4-1998 was not considered till today. Subsequently, petitioner was reinstated on certain conditions, and thereafter after attaining the age of superannuation, he retired from service on 30-9-1998.

A counter affidavit is filed on behalf of the respondents. In the counter it is stated that the gratuity of the petitioner was calculated for a period of 11 years from 4-5-1987 to 30-9-1998 since the petitioner was removed from service for the proved misconduct on 15-9-1986, and on the directions of the Regional Manager the petitioner was reinstated afresh on certain conditions, and thereafter after attaining the age of superannuation, the petitioner retired from service on 30-9-1998, and therefore the gratuity amount payable to the petitioner was calculated for the period from 4-5-1987 to 30-9-1998 amounting to Rs.41,567/-, and the said amount was paid to the petitioner through the cheque dated 8-10-1998, and the details of the calculation of the gratuity payable to the petitioner was addressed to him, and in view of condition No.3 imposed in the review order, the petitioner was not given any financial benefits for the past service prior to 4-5-1987.

Learned counsel for the petitioner relying upon a Division Bench Judgment of this Court in ***Kothari Industrial Corp. Vs. Appellate Authority under Payment of Gratuity Act*** contended that even though the petitioner is reinstated after the disciplinary action, there is no break in service of the petitioner and he is entitled for all the monetary benefits.

In the case on hand the petitioner was removed from service on 15-9-1986, and was subsequently reinstated by virtue review order, which has taken a lenient view. The first condition of the review order is to revert the petitioner to the post of Assistant Depot Clerk, the second condition is that the period of the absence of the petitioner from the date of removal till he reports for duty be treated as not on duty, and the third condition is that the petitioner is not entitled to any financial benefit for the past service.

The judgment of the Division Bench Judgment of this Court in ***Kothari Industrial Corp. Vs. Appellate Authority under Payment of Gratuity Act,*** relied upon by the petitioner in support of his claim is not applicable to the petitioner inasmuch as in the said case, the punishment imposed was due to unauthorized absence and there was no condition imposed that his past service would not be counted for financial benefits, but in the present case on hand, the punishment imposed was due to cash irregularities which is grave in nature, and this apart, the review order itself made it clear that upon reinstatement, the petitioner shall not be entitled to the financial benefit of past service. The said review order has become

final, for it was not challenged by the petitioner before any higher forum. In that view of the matter, no exception can be taken to the action of the respondents in not paying gratuity for the period prior to his reinstatement, pursuant to the review order.

Writ petition is accordingly dismissed. No costs.

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(N.V. RAMANA, J.)

Date:23rd March, 2006.

GRK

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.13302 of 2002

Dated:23rd March, 2006